

State of California
AIR RESOURCES BOARD

Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Response

PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE
REGULATIONS TO ESTABLISH A STATEWIDE PORTABLE EQUIPMENT
REGISTRATION PROGRAM

Public Hearing Date: December 11, 1998
Agenda Item No: 98-15-1

I. GENERAL

On October 23, 1998, the Air Resources Board ("ARB" or "Board") issued a notice for public hearing to consider the adoption of the proposed amendments to the regulations to Establish a Statewide Portable Equipment Registration Program (regulations), sections 2450 - 2465, title 13, California Code of Regulations (CCR). On that same date, the ARB also issued a Staff Report: Initial Statement of Reasons for Rulemaking, Proposed Amendments to the Regulation for the Statewide Portable Equipment Registration Program. The Staff Report is incorporated by reference herein. Following a public hearing on December 11, 1998, and after consideration of the staff's recommendations and the public's written comments and testimony, the ARB approved the adoption of the proposed amendments to the regulations with modifications in Resolution 98-77.

In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to amend sections 2450 - 2465, title 13, CCR, as approved, after making the modified regulatory language available for public comment for a period of at least 15 days. The Board further provided that the Executive Officer shall consider written comments as may be submitted during this period, make such modifications as may be appropriate, and present the regulations to the Board for further consideration if he determines that this is warranted. After closing the 15-day comment period, the Executive Officer formally adopted the proposed amendments to the regulations. A copy of the Executive Order adopting the proposed amendments to the regulations is part of this rulemaking package.

The Notice of Public Availability of Modified Text was made available to the public on February 16, 1999, with a deadline for public comment of March 3, 1999. As set forth below, the following modifications were noticed. Both the comments on the originally proposed amendments and the comments received as a result of the noticed modifications are summarized and responded to in Section II of this document.

Section 2451(d)(2) text was modified to clarify the intent of the regulations that engines required to register with the Statewide Registration Program due to preemption of a district program by the federal Clean Air Act, may elect to use “current” district daily and annual emission limit permit conditions in place of the daily and annual requirements of the regulations.

Section 2452(gg) text was modified to clarify the intent of the regulations that adequate documentation to prove engine residency includes “valid” permits, rather than merely existing permits.

Sections 2453(l), 2453(l)(1), and 2453(l)(2) texts were modified to clarify and make consistent throughout the regulations, that once statewide registrations are issued, the registrations preempt “current” district permits, except in certain cases as specified.

Section 2456(e)(8) was modified to clarify that applications for portable engine equivalent replacements, in addition to identical replacements, filed on or after July 1, 2001, must meet the most stringent emissions standard. It is the intent of the section to encourage turnover of higher-emitting engines over time.

Section 2456(j)(4) was modified to allow districts the ability to conduct an ambient air quality impact analysis (AQIA) for each project in State Territorial Waters (STW) prior to granting authorization of the project. The owners and operators are required to submit any information necessary to perform the AQIA to the districts. Districts must complete the AQIA within 30 days of receipt of complete information. Registration is not valid for any portable engine operating at a location where the AQIA demonstrates that the portable engine will cause a potential violation of any ambient air quality standard.

Section 2456 (Table 2 Spark-ignition Engine Requirements) was modified to lower the pounds per day limits to 15 lbs/day for nitrogen oxides (NOx) and to 25 lbs/day for volatile organic compounds (VOC). The pound per day limitations are consistent with calculated emissions from an average size spark-ignition engine based on portable engine emission limits contained in the regulations and United States Environmental Protection Agency (U.S. EPA) emission factors. The pound per day limits are not applicable in the South Coast Air Quality Management District, because the district expressed preference for maintaining catalytic control for all engines.

Section 2456 (Table 2 Spark-ignition Engine Requirements) footnote ** was modified to correct the assumed engine efficiency to 24.2 percent. This percentage relates to the default brake specific fuel consumption of 10,500 Btu/bhp-hr, which was used in the conversion for naturally aspirated gasoline spark-ignition engines.

Section 2461(g) language referring to “regulation” was modified to “article,” as this is the correct reference in the context of the section.

Section 2461 (Table 3 Registration and Renewal Fees for Statewide Registration

Program) was modified to remove the words “military” with respect to tactical support equipment. This is consistent with the initially proposed amendments and other references in the regulations. The modification does not change the scope of tactical support equipment to include exclusively military units since it is inherent in the definition in the regulations.

Section 2466. As required by Executive Order W-144-97, Sunset Review was added to the article requiring that the Air Resources Board, in consultation with the Secretary for Environmental Protection, review the provisions of the article to determine whether it should be retained, revised, or repealed, within five years from the effective date of adoption or date of implementation, which ever comes later.

The above-referenced notices and the Staff Report have been available from the ARB upon request pursuant to title 13, CCR section 1902, and were available in the context of the subject rulemaking in the manner required by Government Code section 11346.7.

In considering the proposed amendments to the regulations and modifications, pursuant to Government Code section 11346.9(a)(4), the ARB has determined that no alternative considered by the agency would be more effective in carrying out the purposes for which regulatory action was proposed or would be as effective and less burdensome to affected private persons than the proposed action.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSE

Written comments were received during the 45-day public comment period preceding the public hearing, and during the 15-day public comment period that followed the public hearing. Oral testimony was received during the public hearing.

The following organizations and businesses submitted written comments during the 45-day comment period preceding the public hearing:

Lake County Air Quality Management District
North Coast Unified Air Quality Management District
Prime Equipment Service
Rain for Rent
Sacramento Municipal Utility District
Santa Barbara County Air Pollution Control District
South Coast Air Quality Management District

Oral testimony and comments were received from the representatives of the following businesses and organizations at the public hearing held December 11, 1998:

South Coast Air Quality Management District
Construction Industry Air Quality Coalition

Prime Equipment Service
Gary Drilling/Coalition of Petroleum Services

The following business submitted a written comment during the 15-day comment period following the public hearing:

Granite Construction Company

The majority of those that provided testimony at the public hearing supported the adoption of the proposed amendments to the regulations. A summary of the written and oral comments, and the agency responses are set forth below.

**Written Comments Received During the 45-Day Public Comment Period
(October 23, 1998 - December 10, 1998)**

Rain for Rent (November 16, 1998)

Comment: Supports ratification of section 2456(e) of the proposed amendments to the regulations, which will change the registration date from July 1, 1998, to July 1, 2000.

North Coast Unified Air Quality Management District (November 25, 1998)

Comment: Sources subject to federal New Source Performance Standards (NSPS) Subpart OOO are required by district Rule 220(b) to have a 30-day public comment period for the construction permit for any NSPS source. There is an exclusion, however, if the source utilizes Best Available Control Technology (BACT) and operates less than 90 days. In addition, Subpart OOO sources may require some local planning agency use permit for siting purposes. This may require specific data on emissions potential by the plant as well as the responsible permitting agency. The district is not a responsible agency, so will ARB be willing to attend local planning hearings to answer questions concerning these sources? The district recommends including a provision stating that Subpart OOO registration certificates are only valid (1) for 90 days duration at a specific site in the district, (2) for those areas zoned for these plants as principally permitted uses, and (3) for site which have existing use permits.

Response: Registration with the Statewide Registration Program does not preempt local jurisdictions from making land-use determinations or implementing other programs outside of the district program that protect specific sites from undesirable impacts. With respect to Subpart OOO sources and the responsible permitting agency, as stated in the Initial Statement of Reasons Chapter I II-2, ARB is not proposing to change the current enforcement authority of these sources. Districts with delegation of authority will continue to enforce Subpart OOO requirements and be the lead regulatory agency where required. In districts without delegation, U.S. EPA will enforce the Subpart OOO requirements and be the lead regulatory agency.

Sacramento Municipal Utility District (December 2, 1998)

Comment: Sacramento Municipal Utility District (SMUD) has several post-1995 model year

portable diesel engines for which district permits were not applied for or issued. The portable engines do not meet the “resident engine” definition in the regulations and are therefore subject to the non-resident emission limits and control technology requirements. SMUD contends that it is not cost effective to retrofit or replace the engines.

As a result, SMUD requests inclusion of post-1995 engines into the Statewide Registration Program as resident engines by amending the definition of a resident engine to mean a portable engine that resided in the State of California at any time during the calendar years 1995 to 1998 and an application for registration is submitted to the Executive Officer no later than one year from the effective date of the amended regulations.

Response: California Health and Safety Code (HSC) section 41754 requires that emissions from registered portable engines shall not, in the aggregate, interfere with the attainment or maintenance of State or federal ambient air quality standards. To address this, the Portable Equipment Registration Program Workgroup (Workgroup), of which SMUD was a part, chose 1995 as the cut-off date for determining engine residency. The group chose a date prior to implementation of the regulations in order to prevent large numbers of high-emitting, out-of-state engines from registering with the Statewide Registration Program. The Workgroup anticipated that virtually all of the engines seeking registration were currently operating in California under local district authority, and would be subject to similar control technology and emission limits by the local districts. New engines would have to incorporate Best Available Control Technology (BACT) and be subject to emission limits. In addition, registered engines would be required, over time, to be retrofitted or replaced with cleaner technologies. This is consistent with section 41754.

It is also important to remember that registration under the statewide program is voluntary. If SMUD cannot meet the requirements of the Program, it may not be advantageous to register. This would appear to be particularly true for SMUD since their equipment would be primarily used in the Sacramento Metro Air Quality Management District. The Statewide Registration Program provides the most practical form of operating permits to equipment that is moved between districts.

Lake County Air Quality Management District (December 7, 1998)

Comment 1: District has little concern over statewide registration of diesel engines and some small auxiliary equipment with Best Available Control Technology (BACT); however the district is strongly opposed to including sources subject to federal New Source Performance Standards (NSPS) Subpart OOO. The district is delegated by U.S. EPA to administer and enforce Subpart OOO requirements. Because of large potential emissions, the district is required to perform Source Review, including public notice. Normal process materials produce hazardous air pollutant (HAP) emissions such as trace metals. In fact, the registration exclusion for locations with HAP emissions makes virtually all of these sources ineligible for registration. The district urges the Board to remove large equipment units, in general, and Subpart OOO sources from the Statewide Registration Program. Inclusion of Subpart OOO sources limits district ability to perform pre-project reviews, conduct public hearings, and consider local conditions.

Response: As stated in the Initial Statement of Reasons Chapter I II-2, ARB is not proposing to change the current enforcement authority over Subpart OOO sources. Districts with delegation of authority will continue to enforce Subpart OOO requirements and be the lead regulatory agency where required. In districts without delegation, U.S. EPA will enforce the Subpart OOO requirements and be the lead regulatory agency.

The enabling legislation requires that once registered, an engine or equipment unit would be able to operate anywhere in California under one set of emission control requirements. Therefore, as specified in the amended regulations at Section 2457(d), operations at a location where processing of materials has the potential to emit HAPs will not be allowed as a condition of registration. If HAPs could be emitted, then the source must get a district permit. Districts will continue to have, as they presently do under district permitting programs, the ability to inspect ARB-registered equipment at each location, and where it can be verified that a nuisance or other threat to the public exists, order the cessation of operation at that location. In addition, the Regulation does not preempt counties or local jurisdictions from making land-use determinations or implementing other programs outside of the air district program that protect specific sites from undesirable impact.

Comment 2: The inspection and compliance verification process is inefficient without a posted permit and conditions on the portable equipment, because it requires either two inspections or a direct phone/computer link to ARB to identify requirements. The district requests that the ARB require posted permits with operating conditions and that a notice be given to the district prior to operating at any new site.

Response: Posting the registration certificate on the portable equipment itself is not practical due to exposure to inclement weather, operating temperatures, and normal wear and tear, etc. Section 2453(g) of the regulations requires that the registration identification label be affixed to the equipment at all times, and that the registration certificate be kept on the immediate premises at all times and made accessible to the district upon request. The registration certificate contains all the applicable operating conditions for the portable equipment. The regulations at Section 2459(a) require equipment that will operate in a district more than five days to notify the district two working days in advance of coming into the district. More than two days advance notice is not practical for all equipment operators, especially rental equipment.

Prime Service, Inc. (December 8, 1998)

Comment 1: Prime supports the extra window of opportunity to register portable engines as “resident” and to register non-resident engines without having to meet certified levels upon initial registration.

Comment 2: Prime expresses concern that some engines cannot register as “resident,” because the units have been residing in air districts where the engines are exempt from permitting based on horsepower rating, etc. Prime urges the Board to amend the regulations to allow these engines to register as resident engines or allow registration provided the owner includes the engines in a

compliance plan to retrofit or replace the engines pursuant to the regulations.

Response: Another criterion to qualify as a resident engine is providing proof that the engine resided in CA in 1995 and an application is received by 7/1/ 2000. Proof of residency does not have to be in the form of district permit; tax records, usage records, maintenance records, etc. suffice if such records show residence in California.

The definition of what qualifies as a resident engine was agreed upon by the Workgroup and made purposefully limited in scope to prevent large numbers of higher-emitting, out-of-state engines from registering. Expanding the resident engine definition would relax the standards to the detriment of air quality.

Comment 3: Prime supports the inclusion of additional incentives for spark-ignition engines and the extension of the time line under a compliance plan for large engine fleets.

Comment 4: Prime urges the Board to direct staff to develop an expedited registration process for new, certified engines in order to meet the demands of rental businesses.

Response: CARB staff has, in consultation with representatives of Prime Services, developed a fast-track registration process for new U.S.EPA and CARB certified nonroad engines.

Comment 5: Prime believes the regulation should allow short-term State Territorial Waters (STW) equipment to follow notification requirements already in place for non-STW equipment. Reserve 14-day notification of STW equipment to longer-term projects that have more significant air impacts.

Response: Because STW equipment that exceeds district-offset thresholds must be mitigated on a per project basis, districts need to be aware of all STW projects and require reasonable period of time to evaluate the projects. Notifications do not have to be in writing; they may be done by fax or phone.

Comment 6: The regulation should more clearly state in section 2461(g) that for multiple equipment inspected at a source, the district inspection fee shall not exceed the actual cost for conducting the inspection, and require that districts provide written documentation justifying costs of performing inspections.

Response: Staff believes the current language clearly states that districts may not charge more than cost of actual staff time for inspection of multiple pieces of equipment.

Comment 7: Prime supports the source test exemption for certified engines and certain engines retrofitted to meet certified levels.

Comment 8: Prime suggest that the board change the deadlines for informing applicants of incomplete applications for those received both before and after 6/1/2000 due date to the cut-off

date of 7/1/2000 for non-resident engines to meet more stringent emissions standards. This time frame may not allow sufficient time to submit the required information.

Response: Section 2453(e) simply requires ARB to notify applicants of the status of an application (whether the application is complete or that supplemental information is required to be submitted prior to deeming the application complete) within the given time frames. The section does not require that applicants submit the requested information before a specified deadline. For example, for an application received on May 1, 2000, ARB staff must either deem the application complete or list the deficiencies of the application within 45 days of May 1, 2000 (by June 14, 2000). This does not require that the applicant address the deficiencies before any specific date. However, because ARB must either issue or deny application for registration within 180 days in the above scenario, if the applicant did not address the deficiencies listed, the application would be denied. We believe that the time lines indicated in Section 2453(e) are appropriate.

Santa Barbara County Air Pollution Control District (December 9, 1998)

Comment: The District is satisfied that most of their concerns have been addressed, especially those concerns pertaining to extension of the Statewide Registration Program into State Territorial Waters (STW) and inclusion of portable equipment units subject to federal New Source Performance Standards (NSPS) Subpart OOO. The District expressed thanks to staff for including the district in discussions and workshops and look forward to adoption of the proposed amendments.

South Coast Air Quality Management District (December 10, 1998)

Comment 1: The District asked for clarification with respect to dredging operations and operations in State Territorial Waters (STW). The District does not agree with the proposed changes to technology requirements for dredge engines, but believes the proposed project emission limits and offset requirements are protective of air quality within the South Coast air basin. As the district understands the amendments, the limits and offset requirements apply to all registered engines, including nonroad engines.

Response: Portable engines, including dredge engines, may not operate in the STW until authorization is received from the corresponding onshore district. If the authorization to operate is in the form of a district permit, then the most stringent requirements of either the district permit or the statewide registration apply. If authorization to operate is not in the form of a district permit, then the onshore district may require that the engine's emissions be mitigated. In addition, the onshore district may perform an air quality impact analysis (AQIA) for proposed STW operation prior to authorization. The onshore district may prohibit operation of state registered engines in STW at any location where an AQIA demonstrates a potential violation of an ambient air quality standard.

Comment 2: It must be clear that it is the operator's responsibility to demonstrate that equipment is in compliance with daily emission limits. The district believes that the regulations should require actual, rather than estimated, hours of operation for purposes of determining compliance with daily emission limits. This can be accomplished with a non-resettable hour

meter.

Response: In order to maintain some degree of flexibility in the daily recordkeeping requirements for engines, the regulations allow the owner to maintain either the total fuel used and an estimate of the operating hours, or the actual operating hours. In addition to use of a non-resettable hour meter, acceptable methods of record keeping would include determination of fuel use from fuel purchase records, fuel tank sticking or readings from an ARB approved fuel meter.

Comment 3: The district does not agree with the proposed option of complying with mass emission limits in lieu of emission concentration limits or control technology requirements for resident spark-ignition engines. The daily emission limits are not representative of average size engines equipped with a catalyst. Catalyst technology is proven and the district believes it is cost-effective to install a catalyst or meet the emission concentration limits. The district requires three-way catalysts on these types of engines as Best Available Control Technology (BACT) and source tests have shown that the concentration limits are achievable. District Rule 1110.2(d)(2)(C) requires all portable spark-ignition engines to meet the concentration limits by December 31, 1999. The proposed daily limits would be a relaxation of the rule requirement. Recommend excluding resident spark-ignition engines from the proposed mass emission limit alternative.

Response: Staff proposes to lower the proposed daily emission limit levels for nitrogen oxides (NOx) and volatile organic compounds (VOC) based on revised calculations for emissions from an average size spark-ignition engine, considering existing emission limits in the regulations. Staff also proposes to exclude SCAQMD from the mass emission limit option per their recommendation and concurrence by the Board. The changes were part of the 15-day modifications sent out for public notification on February 17, 1999, and are part of the final regulation order.

Oral Testimony Given at the Public Hearing (December 11, 1998)

Larry Bowen, South Coast Air Quality Management District

Comment 1: The district generally supports staff's proposal, but reiterated comments contained in the district's December 10, 1998, letter. He commented on the 100 lbs/day NOx and VOC daily emission limits contained in Table 2 of the proposed amendments to the regulations. Although he did get to see staff's proposed modification to reduce the NOx and VOC daily emission limits for 15-day notification the morning of the hearing, he believes that the emission concentration and control technology requirements are better than daily emission limits. The district has found that these requirements are achievable. Therefore, the district proposes that the option to meet daily emission limits in lieu of emission concentration or control technology requirements be excluded within South Coast Air Quality Management District jurisdiction.

Response: Based on the above comment, ARB staff excluded the option for spark-ignited

engines operated within the South Coast Air Quality Management District to meet daily emission limits in lieu of emission concentration or control technology requirements.

Comment 2: The district supports the proposed amendment requiring portable equipment operating in State Territorial Waters (STW) to meet the corresponding onshore district offset limits.

Comment 3: The district believes it is the responsibility of the source operator to maintain accurate records.

Response: The statewide registration program requires that owners and operators of registered portable engines maintain daily records of operation. The content of the records is specified in the operating conditions attached to the statewide portable equipment registration certificate. The records of operation must be kept in a centralized location and made available to ARB or district staff upon request. In addition quarterly summaries of operation must be submitted to ARB on an annual basis. The quarterly summaries will be made available to district staff upon request.

Jeb Stuart, Construction Industry Air Quality Coalition

Comment: Mr. Stuart thanked staff for being flexible, developing cost effective regulations, and providing good application turnaround. He thinks the proposed amendments to the regulations will help air quality by encouraging statewide registration, because there are numerous unpermitted engines in the State.

Paul Buchanan, Prime Equipment Service

Comment 1: He supports the proposed amendments to the regulations in the areas of extension of the application timeline and consideration of larger engine fleets with respect to the compliance plan. However, he proposes further extension of the Statewide Registration Program to allow non-resident engines to register by including them in a compliance plan.

Response: Allowing nonresident engines to register under a compliance plan prior to meeting control technology or emission requirements would be contrary to the requirements of the enabling legislation. California Health and Safety Code (HSC) section 41754 requires that emissions from registered portable engines shall not, in the aggregate, interfere with the attainment or maintenance of State or federal ambient air quality standards. To address this, the Portable Equipment Registration Program Workgroup (Workgroup) chose 1995 as the cut-off date for determining engine residency. The group chose a date prior to implementation of the regulations in order to prevent large numbers of high-emitting, out-of-state engines from registering with the Statewide Registration Program. The Workgroup anticipated that virtually all of the engines seeking registration were currently operating in California under local district authority, and would be subject to similar control technology and emission limits by the local districts. New engines would have to incorporate Best Available Control Technology (BACT)

and be subject to emission limits. In addition, registered engines would be required, over time, to be retrofitted or replaced with cleaner technologies. This is consistent with section 41754.

Although the residency definition prohibits some engines from registering with the Statewide Registration Program, it is the goal of the program to reduce emissions over time. The Statewide Registration Program is voluntary and Prime Services is not precluded from obtaining district permits for these portable diesel engines.

The intent of the compliance plan provisions of the regulation are to encourage owners of registered engines to be retrofitted to meet new certified engine emission levels or be replaced with certified engines, prior to the 2010 deadline. The provision was not crafted to allow engines to register prior to meeting the specified emission control requirements of the regulation.

Comment 2: He would like faster application turnaround for rental equipment.

Response: Based on Prime Service's comment, CARB staff has, in consultation with representatives of Prime Services, developed a fast-track registration process for new U.S.EPA and CARB certified nonroad engines.

Terry Ellis, Gary Drilling/Coalition of Petroleum Services

Comment: He has been a part of the development of the Statewide Registration Program from the beginning. With such complicated issues involved, he finds the regulations to be flexible and reasonable and he is supportive of the proposed amendments to the regulations. He thinks the Statewide Registration Program works and provides incentives to applicants.

**Written Comment Received During the 15-Day Public Comment Period
(February 17, 1999 - March 3, 1999)**

Ron A. Brajkovich, Granite Construction Company

Comment: Section 2456(e)(8) was modified to clarify that applications for portable engine equivalent replacements, in addition to identical replacements, filed on or after July 1, 2001, must meet the most stringent emissions standard. The ARB should consider the effects on owners or operators of registered portable engines for which no replacement is available that can meet the most stringent emissions standard.

Response: ARB staff believes the July 1, 2001 deadline in addition to maintaining air quality and integrity of the State Implementation Plan, allows ample opportunity for owners and operators of registered portable engines to replace older engines. If an irreplaceable engine were to break down after the 2001 deadline, the engine could be retrofitted with existing technologies to meet the most stringent emission requirements.